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April 1, 2013

Ms. Jocelyn Boyd
Chief Clerk and Administrator
South Carolina Public Service Commission
Synergy Business Park, The Saluda Building
101 Executive Center Drive
Columbia, South Carolina 29210

Re: South Carolina Telephone Coalition Petition to Modify Alternative
Regulation Plans Filed Pursuant to S. C. Code Ann § 58-0-576(B) to
Take Into Account Recent Action by the Federal Communications
Commission
Docket No. 2013-55-C

Dear Ms. Boyd:

Enclosed for filing on behalf of the South Carolina Telephone Coalition
(SCTC) please find our Response to the South Carolina Cable Television
Association's Motion for Production of Certain USF Records in the above-
referenced matter.

Thank you for your assistance.

Sincerely,

McNAIR LAW FIRM, P.A.



Margaret M. Fox

MMF/rwm
Enclosure

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BEFORE
PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
Docket No. 2013-55-C

In Re: South Carolina Telephone Coalition Petition
to Modify Alternative Regulation Plans Filed
Pursuant to S.C. Code Ann. § 58-9-576(B) to
Take Into Account Recent Action by the Federal
Communications Commission

**SOUTH CAROLINA TELEPHONE COALITION RESPONSE TO SOUTH CAROLINA
CABLE TELEVISION ASSOCIATION’S MOTION FOR PRODUCTION OF CERTAIN
USE RECORDS**

The South Carolina Telephone Coalition ("SCTC") respectfully files this response to the Motion for Production of Certain USF Records filed by intervenor South Carolina Cable Television Association ("SCCTA") in the above-referenced matter.

By its Motion, SCCTA asks the Public Service Commission of South Carolina (“Commission”) to make available certain documents that carriers of last resort (“COLRs”), including SCTC member companies, file on an annual basis with the Office of Regulatory Staff (“ORS”) as Administrator of the State Universal Service Fund (“USF”).

SCTC respectfully urges the Commission to deny SCCTA's Motion. The Motion is directed to the Commission, and seeks to have ORS turn information over to SCCTA. However, the information in question belongs to the SCTC member companies and other COLRs. The information is in ORS' possession only for its use in administering the State USF. The SCTC members have a strong interest in protecting this information and, in fact, the SCTC previously

requested, and the Commission issued, a protective order covering the *exact same information* that is at issue here. *See* Order No. 2005-139.

The Commission Protective Order that already is in place succinctly states the harm that SCTC member companies face if the information being requested here is released. According to the Commission Order, “it is not appropriate to make detailed information regarding a party’s operations publicly available. Access to this information could give actual and potential competitors an unfair competitive advantage.” Order No. 2005-139 at pp. 2-3. Specifically, the data sheets in question include detailed information regarding the individual companies’ operations that would allow actual and potential competitors to determine the mix of business services provided by the individual companies in the rural areas they serve. This information could be extremely harmful to small, rural telephone companies like the SCTC member companies, because most competitive local exchange carriers specifically target business customers. SCCTA’s members are competitors of SCTC member companies. *See* SCCTA Petition to Intervene at p. 1.

Once an allegation of harm has been made by a party, the burden of proof shifts to the party seeking discovery, who must now come forward and show that the information sought is *both relevant and necessary* to the case. *See Hamm v. South Carolina Public Service Commission*, 312 S.C. 238, 439 S.E.2d 852 (1994). SCCTA has not demonstrated that the requested information is relevant, let alone necessary, to its case.

SCCTA has intervened in this proceeding, asking that the Commission “require adjustments to the USF as a result of the increase in the maximum rate.” SCCTA Motion at p. 1. SCCTA “has suggested that the necessary USF adjustment can be accomplished through the regular annual filings made by ... [COLRs].” According to SCCTA, these documents are

“relevant to determining how to adjust the USF and the SCCTA must have access to them in order to effectively advocate its position in this proceeding.” SCCTA Motion at p. 2.

SCTC agrees that the *forms themselves* are relevant, but asserts that the individual company data included on the forms is not relevant to SCCTA’s position in this proceeding, nor is it likely to lead to the discovery of relevant evidence. The forms themselves are public information. SCCTA has all of the information it needs, therefore, to understand what information is submitted by COLRs and how the process works. Having access to individual company data will not aid in this understanding. This is particularly true in light of the fact that the relief SCCTA is seeking in this proceeding is *prospective* – i.e., SCCTA asks that “[f]ollowing the increase in the maximum rate the Commission must proceed to make appropriate adjustments to the USF.” SCCTA Petition to Intervene at p. 2 (emphasis added). Data filed in previous years is not relevant to this process.¹

Furthermore, even if the information SCCTA seeks could be considered relevant (which it is not), the data sheets in question are not *necessary* to SCCTA’s case. SCCTA claims that, following the rate adjustments SCTC companies may seek in this docket, the companies should file annual USF data on the required forms reflecting those new rates. SCTC does not disagree with that position, and intends to file updated data sheets at the appropriate time. SCCTA’s request is premature, because the SCTC companies have not yet made any rate increases to meet the national average residential rate and, therefore, have not had an opportunity to file the information referenced by SCCTA. Furthermore, the individual company information that has been filed in the past is not necessary for SCCTA in order to effectively advocate its position in this proceeding.

¹ SCCTA’s Motion does not reference a time frame, but merely requests access to the “COLR annual USF filings.” It is unclear for what years SCCTA is seeking this information.

It is evident that SCCTA does not need the information in question for purposes of this proceeding but is merely on a “fishing expedition.” It appears that SCCTA does not seek the information to argue its position, but to check behind the COLRs, ORS, and USF auditors to ensure that the companies are filling out and filing the forms. This is a ministerial matter that is not before the Commission in this proceeding, and any discovery calculated to obtain such information is outside the scope of the instant proceeding. See Royster v. Unity Life Ins. Co., 193 S.C. 468, 8 S.E.2d 875, 877 (1940) (the South Carolina Supreme Court has “time and again stated that it does not favor” fishing expeditions, and limited the scope of discovery to what would be relevant to the claim).

If, notwithstanding the SCTC’s argument here, the Commission directs ORS to provide data to SCCTA under an “appropriate protective order,” as SCCTA requests, SCTC submits that, at a minimum, such Protective Order must treat the data as confidential, privileged and protected business and trade data, and restrict access only to counsel of record and outside (third party) consultants and experts who have no involvement in decision making or consulting with any party regarding marketplace competition, sales, pricing, marketing, market research, market penetration, network design, cost analysis or other competitively sensitive areas.

WHEREFORE, the South Carolina Telephone Coalition respectfully requests that this honorable Commission:

- (1) deny the SCCTA’s Motion for Production of Certain USF Records; and/or
- (2) grant such other and further relief as is just and proper.

Respectfully submitted,

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By: _____

Attorneys for South Carolina Telephone
Coalition

April 1, 2013

Columbia, South Carolina

DOCKET NO. 2013- 55 - C

CERTIFICATE OF SERVICE

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